

No. 14-1134 RE

1. Finley is a 40 year-old man raising twin 12-year old boys. He lives in Sedalia, Missouri, and works at J.C. Penney's store in Sedalia.

2. Finley was an honor student at Smith-Cotton High School, in Sedalia, Missouri, and an athlete. He attended Lincoln University and was on the Dean's list. While going to school at Lincoln, he worked several jobs and maintained a 3.2 grade point average.

3. At Lincoln, Finley "got caught up" in being on his own¹ and associated with people who were involved with illegal drugs.

I. Criminal Offenses

A. Cole County

4. On January 9, 1995, the Prosecuting Attorney of Cole County filed an indictment stating:

The Grand Jurors of the County of Cole, State of Missouri, charge that the defendant, Christopher Paul Finley, in violation of Section 195.223, RSMo, committed the class B felony of trafficking in the second degree, punishable upon conviction under Sections 558.011.1(1) and 558.011.1(2) RSMo, in that on or about November 10, 1994, the County of Cole, State of Missouri, the defendant possessed more than two grams of a mixture of substance containing a cocaine base, a controlled substance, knowing of its presence and illegal nature[.²]

5. On March 7, 1995, Finley pled guilty in the Circuit Court of Cole County, Missouri ("Cole County Court") to the Class B felony of trafficking in drugs in the second degree. He received a suspended execution of sentence and was placed on five years' probation.

6. On November 21, 1995, the Prosecuting Attorney of Cole County filed an indictment stating:

The Grand jurors of the County of Cole, State of Missouri, charge that the defendant, Christopher Paul Finley, in violation of Section 195.223, RSMo, committed the class A felony of trafficking in the second degree, punishable upon conviction under Sections 558.011.1(1) and 558.011.1(2) RSMo, in that on or about November 3, 1995, in the County of Cole, State of Missouri, the

¹ Tr. at 15.

² Respondent's ex. 1.

defendant possessed more than 6 grams of a mixture of substance containing a cocaine base.[³]

7. On December 18, 1995, Finley pled guilty in the Cole County Court to the Class A felony of trafficking in drugs/attempt trafficking in drugs in the second degree. He received a suspended execution of sentence and was placed on five years' probation.⁴

B. Saline County

8. On July 12, 1995, the Prosecuting Attorney of Saline County filed a misdemeanor information stating:

The Prosecuting Attorney of the County of Saline, State of Missouri, charges that the defendant, in violation of Section 755.010, RSMo, committed the class B Misdemeanor of driving while intoxicated, punishable upon conviction under Sections 558.011.1(6) and 560.016.1(2), RSMo, in that on or about June 23, 1995, in the County of Saline, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol.[⁵]

9. On August 16, 1995, Finley pled guilty in the Circuit Court of Saline County, Missouri ("Saline County Court") to the Class B misdemeanor of DWI - alcohol. He received a fine.

10. On January 29, 1997, the Prosecuting Attorney of Saline County filed a second amended misdemeanor information stating:

The Assistant Prosecuting Attorney of the County of Saline, State of Missouri, charges that the defendant, in violation of Section 577.012, RSMo, committed the class A misdemeanor of driving with excessive blood alcohol content, punishable upon conviction under Sections 558.011 and 560.016, 577.033, RSMo, in that on or about September 22, 1996, in the County of Saline, State of Missouri, the defendant operated a motor vehicle with ten-

³ Respondents ex. 2.

⁴ Finley may also have served a period of shock incarceration in connection with this guilty plea, but the record is not clear.

⁵ Respondent's ex. 3.

hundredths of one percent or more by weight of alcohol in his blood[.⁶]

11. On January 29, 1997, Finley pled guilty in the Saline County Court to the Class A misdemeanor of excessive BAC - prior offender. He received two days of incarceration and a fine.

C. Pettis County

12. On November 16, 2010, the Prosecuting Attorney of Pettis County filed an information in lieu of indictment stating:

COUNT 1

The Prosecuting Attorney of Pettis County, Missouri, charges that the defendant, in violation of § 195.211, RSMo, committed the class B felony of manufacture of a controlled substance, punishable upon conviction under § 195.211, RSMo, in that on or about November 4, 2005, in Pettis County, Missouri, the defendant knowingly manufactured cocaine base, a controlled substance, by chemical synthesis.

COUNT 2

The Prosecuting Attorney of Pettis County, Missouri, charges that the defendant, in violation of § 195.211, RSMo, committed the class B felony of possession of a controlled substance with intent to deliver, punishable upon conviction under § 195.211, RSMo, in that on or about November 4, 2005, in Pettis County, Missouri, the defendant, with the intent to distribute, deliver and sell, possessed cocaine, a controlled substance, knowing of its presence and illegal nature.

COUNT 3

The Prosecuting Attorney of Pettis County, Missouri, charges that the defendant, in violation of § 195.211, RSMo, committed the class B felony of possession of a controlled substance with intent to deliver, punishable upon conviction under § 195.211, RSMo, in that on or about November 4, 2005, in Pettis County, Missouri, the defendant, with the intent to distribute, deliver and sell, possessed more than 5 grams of marijuana, a controlled substance, knowing of its presence and illegal nature.

⁶ Respondent's ex. 4.

COUNT 4

The Prosecuting Attorney of Pettis County, Missouri, charges that the defendant, in violation of § 195.223, RSMo, committed the class B felony of trafficking in the second degree, punishable upon conviction under §195.223, RSMo, in that on or about November 4, 2005, in Pettis County, Missouri, the defendant knowingly possessed more than 2 grams of a substance or mixture which contained cocaine base, a controlled substance.[⁷]

13. On November 16, 2010, Finley pled guilty in the Circuit Court of Pettis County, Missouri (“Pettis County Court”) to three Class B felony counts of distribute/deliver/ manufacture/produce or attempt to or possess with intent to distribute/deliver/ manufacture/ produce a controlled substance. He was sentenced to eight years’ incarceration.

14. Also on November 16, 2010, Finley pled guilty in the Pettis County Court to the Class B felony of trafficking in drugs in the second degree under § 195.223, RSMo Supp. 2001. He received an eight year incarceration sentence to be served concurrently with the sentence referenced above.

15. Although Finley committed these crimes in 2005, he was not arrested until 2010.

16. Pursuant to the November 16, 2010 sentencing, Finley was incarcerated at a diagnostic center in Fulton, Missouri. He was released on July 2, 2012, and placed on probation.

17. Finley is currently on parole until December 25, 2016 in connection with the 2010 guilty pleas. His parole has been shortened several times because of his good behavior. If he continues to comply with expectations, he will be eligible for release from parole on August 3, 2015.

II. Application for Licensure

18. On February 13, 2014, Finley submitted an application for a real estate salesperson license to the MREC (“the application”).

⁷ Respondent’s ex. 5.

19. In the application, Finley attested that the statements made in the application were true and correct to the best of his knowledge.

20. The application form contains the following question:

Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, or any other jurisdiction, whether or not sentence was imposed? NOTE: **This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, and alcohol-related offenses (i.e., DWI and BAC). If yes, complete information below.** Attach additional sheet if needed.^[8]

21. Finley answered yes to the above question.

22. The application form instructed Finley to complete the information below, and attach additional sheets of paper if needed. Finley filled in the following information:⁹

Date of Conviction and/or Pleading	<u>2005, 1995</u>	Court Location	<u>Sedalia, Missouri JC</u>
Nature of Conviction	<u>Drug Offense</u>	Case Number	<u>(no answer)</u>

23. The MREC denied Finley's application.

III. Finley's History and Rehabilitation

24. In the 1990s, when Finley pled guilty to several of the criminal offenses, he was in his early 20s.

25. After the convictions in 1995 and 1997, Finley moved back to Sedalia, started working full time, went back to school, and had a child.

26. From 1997 through early 2000, Finley worked at a wheel factory as a quality specialist.

⁸ Respondent's ex. 7A.

⁹ Respondent's ex. 7A.

27. When Finley's child died, he isolated himself from his friends and family, and resumed his association with the people and atmosphere that triggered the actions that led to his drug and alcohol convictions.

28. On November 4, 2005, the police raided Finley's home. A search revealed evidence of possession and trafficking in crack cocaine and marijuana. Finley fled the scene and was not arrested until 2010.

29. From 2006 to 2010, Finley worked as a property manager for a group of condominiums in Cancun, Mexico. He hired and provided oversight to maintenance and cleaning staff. He attended owners' meetings and paid maintenance and special assessment fees, bills, and taxes. He was responsible for security deposits.

30. Between 2005 and 2010, Finley traveled extensively to and from Mexico. On one trip in 2010, Finley was arrested in Texas. He returned to Missouri and pled guilty to the 2005 offenses.

31. Finley has taken all of the coursework to be licensed as a real estate salesperson.

32. Finley currently has a good reputation in the community for his work ethic, trustworthiness, and integrity.

33. Tina Roquet, d/b/a Preferred Properties, knowing of Finley's history, has agreed to be Finley's sponsoring broker.

Conclusions of Law

We have jurisdiction to hear Finley's complaint. Sections 339.080 and 621.045.¹⁰ Finley has the burden to show that he is entitled to licensure. Section 621.120, RSMo 2000. We decide the issue that was before the MREC, *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778, 782-

¹⁰ Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

83. (Mo. App., W.D. 2007), which is the application. And we exercise the same authority that has been granted to the licensing agency, in this case the MREC. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 264-67 (Mo. App., W.D. 2012). Therefore, we simply decide the application *de novo*. *Id.* When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

This Commission must assess the credibility of witnesses, and we are free to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo.App. W.D.2001).

I. Cause For Denial

The MREC contends there is cause for denial because Finley lacks the qualifications for licensure under § 339.040, and under § 339.080 for the causes for discipline set forth in § 339.100.2(10), (16), (18), (19), and (25).

A. Qualifications for Licensure

Section 339.040 provides that:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:
 - (1) Are persons of good moral character; and
 - (2) Bear a good reputation for honesty, integrity, and fair dealing; and
 - (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Rule 20 CSR 2250-3.010(1) provides:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they are persons of good

moral character; bear a good reputation for honesty, integrity, and fair dealing; and are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

We consider good moral character, reputation and competence to transact the business of a salesperson together because the testimony of Finley's witnesses addresses all three.

Section 314.200, RSMo 2000, states:

No board or other agency created pursuant to laws of the state of Missouri, or by any city, county or other political subdivision of the state, for the purpose of licensing applicants for occupations and professions may deny a license to an applicant primarily upon the basis that a felony or misdemeanor conviction of the applicant precludes the applicant from demonstrating good moral character, where the conviction resulted in the applicant's incarceration, and the applicant has been released by pardon, parole or otherwise from such incarceration, or resulted in the applicant being placed on probation and there is no evidence the applicant has violated the conditions of his probation. **The board or other agency may consider the conviction as some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant's character.**

(Emphasis added.)

Case law provides further guidance on this issue. Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). When the licensing agency proves a criminal conviction, we determine the applicant's moral character from his conduct, present reputation, evidence of any rehabilitation, and upon "a consideration and determination of the entire factual congeries." *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974). *See also State Bd. of Regis'n for the Healing Arts v. DeVore*, 517 S.W.2d 480, 486 (Mo. App., K.C.D. 1974).

Reputation is the “consensus view of many people[.]” *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). It is “the general opinion . . . held of a person by those in the community in which such person resides[.]” *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black’s Law Dictionary, Rev. 4th ed. 1467-68)). Competent is defined as “possessed of or characterized by marked or sufficient aptitude, skill, strength, or knowledge[.]” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 463 (unabr. 1986). The statutory definition of “incompetence” further refines this definition to relate to “actual occupational ability” and to the “actual ability of a person to perform that occupation.” Section 1.020(9).

Finley testified about his moral character and reputation and how it had changed since the years he was involved in criminal activity. Finley testified as to his own reputation:

There’s not anybody – in my community where I work right now, if you went door to door and asked, “What do you think about Chris Finley?” there is not one person in my community that would have one bad thing to say about me, regardless of my past mistakes. Not one individual from anybody in that community.[¹¹]

Finley also presented witnesses to testify on his behalf. Scott Patrick, Finley’s high school coach, and Andre Taylor, a friend from his past, testified as to his character and work ethic. Taylor knew of the serious criminal activity, but testified that he still would trust Finley as a person who had made mistakes, was punished for those mistakes, and should be given an opportunity to move on.¹²

Ida Shobe, formerly Finley’s Sunday school class teacher and currently his neighbor, described Finley as “trustworthy, kind, helpful, intelligent.”¹³ She testified that he was a great

¹¹ Tr. at 39.

¹² Tr. at 102.

¹³ Tr. at 107.

father and that she believed he changed because “he wants his kids to be upstanding citizens.”¹⁴

Shobe testified that she wanted to work with Finley to sell her house if he got his license.

Jeff Mittelhauser, the Prosecuting Attorney of Pettis County, testified:

Q: Okay. Years ago, you came in contact with me, and it was somewhat of a rocky start. I was in trouble, and it was your job as the prosecuting attorney to punish me, and you did just that, okay?

A: Yeah.

Q: But fast-forwarding to today, right now, how would you say the individual you had come in contact with then has changed his life in a positive way?

A: I believe it has been six or seven years since Mr. Finley got in trouble. It took a little while to resolve the case. It was a case that I remembered for a few different reasons, and that made it all the more noticeable to me, when I have run into Mr. Finley over the last year and seen that he was working in a good job here in Sedalia. I’ve seen him both at his place of work –

I actually ran into him at his home, not too long ago, just as a coincidence. And by his appearance and his manner and the things that he’s doing in his life, it was remarkable to me, how he had changed from the young man involved in criminal activity, some six or seven or eight years ago.

Q: Okay. Do you feel that my past mistakes should have any bearing, whether or not I will be capable of performing any professional duties as a realtor?

A: Well, as a person whose job frequently causes me to hang a criminal conviction around a person’s neck, I do believe that a person’s past, to some extent, stays with them through their entire life. Whether that should disqualify a person from receiving this type of license, I leave that to the licensing agency.

But to the extent that there is ever any leeway to reduce the impact of that, to allow a person to be considered who might normally not be considered, I believe that Mr. Finley’s attempts to turn himself around are very significant ones.

Q: So at this point I am living in Sedalia, Missouri, Pettis County, the community in which you work, correct?

¹⁴ Tr. at 109-10.

A: Yes.

Q: Now, as a realtor, that's where I would be practicing my real estate, if I were to receive my real estate license. Now, would you feel, in your own opinion – I don't know if you're able to answer this or not. But in your own opinion, would you feel that the community or people of Sedalia would be threatened by me being a realtor? Would you consider me as a menace to society or a threat to society in any manner?

A: No, I personally would not.

Q: So my trustworthiness has kind of shifted from how I was years before to where it's at right now?

A: In my mind, it's shifted 180 degrees.

Q: So overall how would you view the individual that you're speaking with today, Christopher Paul Finley?

A: Well, I certainly know a lot of local real estate agents. But if Mr. Finley were given a license to sell real estate in the area, I would probably consider contacting him if I needed to look for real estate to buy in the future.^[15]

We find these witnesses, including Finley, to be credible. Finley's witnesses spoke of Finley's good moral character, reputation, work ethic, and ability to perform the functions of a real estate salesperson. Finley has a real estate broker willing to sponsor him, from which we can infer her faith in his professional abilities. His successful career as a property manager in Mexico also speaks to his competence to transact property-related business in a manner that is safe to the public. His neighbor wants to work with him, and the Pettis County prosecuting attorney – the same one who prosecuted him for his 2005 drug offenses – “wouldn't hesitate doing business” with him as a real estate salesperson.

Our only hesitation in making our determination relates to Finley's conduct in leaving the country in 2005. He claims he did not know of the warrant that was pending, but his testimony

¹⁵ Tr. at 114-17.

was vague about that time period. He testified that he traveled to and from the United States during that period and there were never any red flags that alerted him to a potential arrest. The prosecuting attorney remembered the case because of the long period between Finley's criminal conduct and his guilty plea, and offered his own inference that Finley knew he was in trouble and left the country but then decided to face the charges in 2010 when he returned to the United States. Even so, he testified for Finley, as set forth above. While Finley's testimony as to this time period was evasive, we do not find that Finley lied to us, and will not let this preclude us from finding good moral character.

Finley has met his burden of proving that he is a person of good moral character; bears a good reputation for honesty, integrity, and fair dealing; and is competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public. He meets these qualifications for licensure.

B. Discretionary Causes for Denial

Section 339.080 states:

1. The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100

Section 339.100 sets forth causes for discipline:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

- (10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense of which an essential element is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, “**material**” means important information about which the commission should be informed and which may influence a licensing decision[.]

1. Obtaining Certification/Material Omission – Subdivisions (10) and (25)

Subdivision (10) would be relevant if the MREC had granted Finley’s application, but it did not. Finley did not obtain a license, so we review whether his actions are cause for denial under subdivision (25).

Misrepresentation is a “a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.” *Hernandez*, 936 S.W.2d at 899 n.2 and n.3. To misstate is “to state wrongly: give a false account of[.]” WEBSTER’S at 1446. To omit is “to leave out or leave unmentioned[.]” *Id.* at 1574.

Finley's answers in his application were not as detailed as they should have been. By listing 1995 and 2005, Sedalia and JC (which we take to mean Jefferson City, a reference to the Cole County Court), and "drugs" as the type of crime, we find that he put the MREC on notice of all of his convictions except the August 16, 1995 guilty plea to the Class B misdemeanor of DWI – alcohol, and the January 29, 1997 guilty plea to the Class A misdemeanor of excessive BAC - prior offender in Saline County. The information Finley failed to supply in his application was material information because the fact that Finley had pled guilty to two additional offenses could have influenced the MREC's decision.

Finley testified that he did not intend to mislead the MREC. He stated he was concentrating on the felonies, and knew his fingerprint check would reveal all the crimes.

He testified:

So I enlisted in the [real estate] courses in Warrensburg, and I started my classes. When I did pass everything and I had to submit my application, my first thought was just the felony, the previous felonies that had happened. So that's what I put down. I wasn't trying to keep the BAC or anything like that from the Real Estate Commission. I knew I was submitting my fingerprints. I knew my entire history was going to be laid out. I knew that.^{16]}

He also testified that he intended to attach a letter with his application more fully describing the criminal offenses, but he was told to wait. Although the question on the application was clear, Finley's account is somewhat bolstered by the fact that the two criminal offenses he omitted were the least serious – two misdemeanors – when he revealed felonies and a more recent guilty plea to a more serious crime.

We find that Finley omitted material information, but that he did not commit misrepresentation.

¹⁶ Tr. at 26.

There is no cause for denial under § 339.100.2(10). There is cause for denial under § 339.100.2(25).

2. Grounds for Refusal – Subdivision (16)

We have already discussed the grounds for refusal above. Finley proved he met the qualifications for licensure. There is no cause for denial under § 339.100.2(16).

3. Criminal Offenses – Subdivision (18)

i. Reasonably Related

The MREC argues the crimes of trafficking in drugs in the second degree; DWI – alcohol, excessive BAC - prior offender, and distributing/delivering/manufacturing/producing or attempting to or possessing with intent to distribute/deliver/manufacture/produce a controlled substance are reasonably related to the qualifications, functions or duties of a real estate agent.

To relate is to show or establish a logical or causal connection. WEBSTER’S at 1916. “Reasonable” means “being or remaining within the bounds of reason: not extreme: not excessive;” and “not conflicting with reason: not absurd: not ridiculous.” *Id.* at 1892. We conclude that for a criminal offense to be reasonably related to the qualifications, functions or duties of a profession, the relationship between the offense and the profession must be logical and not strained or exceedingly tenuous.

The drug-related criminal offenses are reasonably related to the qualifications of a real estate salesperson because one of those qualifications is good moral character. Unlike our discussion above, subdivision (18) does not require a finding that Finley lacks good moral character, but merely that the criminal offenses to which he pled guilty are offenses reasonably related to good moral character. We find that they are.

In addition, real estate salespersons often drive others to locations to view property. The DWI and BAC crimes are reasonably related to this duty.

There is cause for denial under § 339.100.2(18).

ii. Moral Turpitude

The MREC argues the guilty pleas involve moral turpitude. Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”

In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)). In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*, 213 S.W.3d 720 (Mo. App., W.D. 2007), a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

Id. at 725. The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved. *Id.*

The drug trafficking crimes are Category 1 crimes and involve moral turpitude. *In re Shunk*, 847 S.W.2d 789 (Mo. banc 1993). We determine that the misdemeanor DWI and

excessive BAC crimes are Category 3 crimes, and we have insufficient information to determine whether they involve moral turpitude.

There is cause for denial under § 339.100.2(18).

4. Other Conduct – Subdivision (19)

The MREC argues that Finley is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]” The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]” WEBSTER’S at 1598. Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found that the conduct at issue is cause for discipline under other subdivisions. There is no “other” conduct. Therefore, we find no cause for denial under § 339.100.2(19).

II. Exercise of Discretion

Section 339.080.1 provides that the MREC “may” refuse to issue a license to any person who has engaged in the conduct set forth in § 339.100.2. “Use of the word ‘may’ in a statute implies alternate possibilities and that the conferee of the power has discretion in the exercise of the power.” *McAlister v. Strohmeyer*, 395 S.W.3d 546, 552 (Mo.App. W.D., 2013), quoting *State ex rel. Nixon v. Boone*, 927 S.W.2d 892, 897 (Mo.App. W.D.1996). Finley’s appeal vests in this Commission the same degree of discretion as the MREC, and we need not exercise it in the same way. *Trueblood*, 368 S.W.2d at 267.

An applicant claiming rehabilitation should at least acknowledge guilt and embrace a new moral code. *Francois*, 880 S.W.2d at 603. In accordance with § 314.200, we consider the nature of the crime committed in relation to the license Finley seeks, the date of the conviction, Finley’s conduct since the date of the conviction, and other evidence as to his character.

We have, in the past, found applicants for licensure with criminal histories,¹⁷ or who used illegal drugs,¹⁸ to be rehabilitated. Those cases have several commonalities. In all of them, the applicants candidly acknowledged past crimes or conduct, and showed that they had embraced a new moral code. They took responsibility for their actions and demonstrated absolute honesty in admitting their mistakes. The passage of time between the bad conduct and the license application is one, but not the only, factor considered. Along with the passage of time, the applicants presented admissible evidence of progress at work or in school and often changes in lifestyle.

As in those cases, Finley acknowledges his guilt and accepts responsibility for his prior conduct. He testified:

Okay. Mrs. Winn, just one thing I want to make clear is that I am not denying anything that did happen. I just want us to recognize the change that has taken place since those incidents. And that's all I want to make clear today. I mean, I'm going to wait until after they finish; then I will present my case. But that's all I want, for right now.[¹⁹]

Finley admits and expresses regret that he hurt his family and friends. Finley testified that has a completely different mind-set now. He describes his past associates, letting his pride keep him from seeking help, and the death of his child as triggers for his poor choices and criminal conduct, but does not use them to excuse that conduct. When asked why he believed he would not go back to his prior behavior, Finley testified:

¹⁷ See *Redempta M. Kimanzi vs. State Bd of Nursing*, No. 08-2028 BN (August 5, 2009); *John Farrar vs. Missouri Real Estate Appraisers Commission*, No. 08-0912 RA (April 9, 2009); *Michael C. Cooper d/b/a Cooper's Landing vs. Supervisor of Liquor Control*, No. 04-0858 LC (October 21, 2004); *Sharrisse Walls vs. State Bd. of Nursing*, No. 03-1933 BN (April 1, 2004); and *John T. Ryan, D.C. vs. State Bd. of Chiropractic Examiners*, No. 99-0458 CX (January 3, 2000).

¹⁸ See *Vanessa Ampofo v. State Board of Pharmacy*, No. 08-1202 PH (May 4, 2009); *James A. Brockenbrough v. State Bd. of Regis'n for the Healing Arts*, No. 08-0994 HA (May 4, 2009); and *Christine Ann Trueblood v. State Bd. of Regis'n for the Healing Arts*, No. 09-0795 HA (August 11, 2010).

¹⁹ Tr. at 8.

A: And I'm here today, arguing my case. I'm not around that crowd anymore, I'm not around the individuals, I'm not around alcohol, I'm not around drugs, I'm not around partying. I just take care of my family. I just work. That's the only thing I want to do.

I mean – if I'm surrounded by that, or when I was surrounded by that, it led to that. Whether I was just in the same room with someone or whether I was driving in the car with someone, it led to that. 20 years ago, that was that lifestyle; ten years ago. I mean, it was, that was a different frame of mind then. 20 years ago, it was a college frame of mind.

I haven't had any alcohol incidents since 1996, '97. It's been almost 17 years, 18 years. I don't drink alcohol. Drugs, I don't want to be involved in it. It's about that simple. It's not that frame of mind. It's not like that. I'm trying to have a family, I'm trying to have a career, I'm trying to have something I can enjoy going and doing.

I don't want to risk messing that all up, because I know how it destroyed my family before and I don't want to go through losing everything again, because I lost everything I owned, down to my boxers. I lost it all. And I don't want to go through that again, because that's a lot of weight to carry around. And it hurts.^[20]

Finley differentiates between having a job and having a career in real estate, and states that he is grateful for the chance his family, friends, and supporting broker are giving him.

The testimony we considered in our determination of good moral character, reputation, and business competence is also relevant in deciding how to exercise our discretion. As mentioned above, the testimony was all positive and supported Finley's assertion that he has changed and wants to move forward with his life.

We exercise our discretion and grant Finley's application.

Summary

There is cause to deny Finley's application for licensure under § 339.080.1 and

²⁰ Tr. at 58.

§ 339.100.2(18) and (25). There is no cause for denial under § 339.100.2(10), (16) and (19).

Because Finley has demonstrated his rehabilitation, we exercise our discretion and grant his application for licensure as a real estate salesperson.

SO ORDERED on September 25, 2014.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner